

FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION NO.1901/2007.

Dinesh Gunwant Tule..vs.. State of Maharashtra.

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order
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CORAM: C.L.PANGARKAR,J.

DATE : 17th July, 2007.

1. Heard Mr.J.M.Gandhi, Advocate for the appellant and Mr.A.S.Sonare, Additional Public prosecutor for the State.

2. This is an application under Section 439 of Code of Criminal Procedure.

3. It is alleged that one Jagjivanram Jaiswal committed suicide after consuming pesticides on 26/9/2006. The Police had registered an offence under Section 306 of Indian Penal Code after a suicide-note was found with him. In the meanwhile, many complaints were lodged against the present applicant for having duped those complainants in those cases. It is alleged that the present applicant used to accept money on the pretext that he is Private Secretary of Minister and he has connection with some Ministers and he would get the work done. A large number of

offences have been registered against the present applicant under Section 420 and other Sections of Indian Penal Code.

4. After rejection of the application for anticipatory bail filed by the present applicant in this particular crime, the applicant surrendered before the Police. He is now under arrest. He seeks bail.

5. The learned counsel for the applicant submitted that the applicant is not charged with an offence which is punishable with death or imprisonment for life. It is a fact that he is not charged with an offence punishable with death or imprisonment for life. He submitted that even prima facie the suicide-note does not go to show that it is due to the instigation on part of the present applicant that the deceased committed suicide. It is not necessary that there must be an actual instigation. What is apparent from the suicide-note is that the deceased had paid a sum of Rs. 16,50,000/-, which is in many cases not small, to the applicant on two occasions. It is apparent from the suicide-note that the applicant had given an assurance that licence of the liquor shop would be renewed but that was not done. Ultimately, it appears from the suicide-note that deceased felt disgusted on account of the fact that he has paid large amount and his work has not be done. These contents of the suicide-note go to show that it is on account of tremendous mental

pressure that he has lost large sum of money, he was forced to commit suicide. The question to what amounts to giving instigation cannot be gone at this stage but fact remains that it was one of the reasons why he committed suicide.

6. The learned counsel for the applicant relied on the decision of Supreme Court reported in AIR 2002 SC 1998 (Sanju @ Sanjay Singh Sengar ..vs.. State of Madhya Pradesh) wherein it is alleged that the accused had said to the deceased that 'he should go and die' and deceased committed suicide. It is held that this was not the case of instigation or abetment. This decision is rendered by the Supreme Court on merits after consideration of the entire evidence on record. This is certainly not a stage where the court can enter into that arena at all.

7. The learned counsel then relied on a decision of the Supreme Court reported in 1977 SCC (Cri), 594 (State of Rajasthan, Jaipur ..vs.. Balchand). The Supreme Court has held that bail and not jail is the rule. It also held that there should be circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other trouble in the shape of repeating offences or intimidating witnesses. The court is certainly required to go into the question as to whether accused would make himself available at the time of trial or not. That should be the main

consideration while either rejecting the application or granting bail. First one is whether the accused is likely to flee away from justice and whether he is likely to tamper with the prosecution witnesses. In this regard, it was brought to my notice by the learned Additional Public Prosecutor for the State that since the date offence was registered i.e. on 26th September, 2006, the applicant has been absconding. The learned counsel for the applicant, on the other hand, submitted that he was never absconding. He had moved an application for anticipatory bail before the Sessions Court within three days of registration of crime. I have gone through the order passed by the learned Sessions Judge. It is observed by the learned Sessions Judge in para no.5 of the order passed by him that the applicant/accused was directed to remain present before the court but he never appeared before the court. The court had given him this particular direction to remain present because of the fact that the court was apprehensive that the application has not been signed by the applicant. With this apprehension, the direction given by the learned Sessions Judge that the applicant must remain present before the court was quite justifiable. The learned counsel for the applicant submitted that there was no question of the applicant remaining present before the court because of the fact that the court had not granted interim anticipatory bail to the applicant. When the court had apprehension that application was not signed by the applicant, it certainly

had reason to direct the applicant to produce himself before the court. It appears that on two occasions the court had adjourned the matter yet the applicant refused. The anticipatory bail application filed by the applicant before this court came to be rejected on 29/6/2007. It is, therefore, apparent that for almost eight months, the applicant was not available and was certainly absconding. It is only after this application for anticipatory bail came to be rejected that he chose to surrender before the court. Therefore, there is reasonable apprehension that the applicant certainly would not make himself available at the time of trial if released on bail. The investigation in the matter is still not over. It is alleged that the applicant is quite influential person and if he is so released at this stage when investigation is not complete, he may tamper with the prosecution witnesses. In the circumstances, I find that the application deserves to be rejected. It is rejected.

The applicant is at liberty to move the application for bail before the Sessions Court after charge-sheet is filed.

JUDGE

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